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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

CHUN-CHENG YEH, a.k.a. ALEX YEH,
Defendant.

**UNITED STATES' SENTENCING
MEMORANDUM AND MOTION
FOR DEPARTURE**

No. CR 10-00231 (WHA)

I. INTRODUCTION

The United States files this Sentencing Memorandum in support of its recommendation that this Court, consistent with the proposed Plea Agreement, sentence defendant Chun-Cheng Yeh, a.k.a. Alex Yeh, to a term of imprisonment of eight (8) months and a fine of \$20,000. A copy of the Plea Agreement, which is pursuant to Fed. R. Crim. P. 11(c)(1)(B), is attached to this Sentencing Memorandum as Exhibit 1.

An eight-month sentence strikes the appropriate balance among the various sentencing factors. It accounts for the seriousness of the crime and just punishment, while taking into consideration acceptance of responsibility and cooperation. It is also in line with other sentences that individuals have received in recent criminal antitrust cases. The government disagrees with the recommended term of imprisonment of four (4) months contained in the presentence report ("PSR") prepared by U.S. Probation. Probation justifies the additional discount based on the

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1 defendant's minimal role, voluntary surrender, and personal characteristics. The eight-month
2 sentence already takes the factors into consideration.

3 **II. BACKGROUND**

4 **A. Defendant Yeh**

5 On March 30, 2010, defendant Yeh, a foreign national who resides in Taiwan, was
6 charged by indictment with a one-count violation of the Sherman Antitrust Act, 15 U.S.C. § 1,
7 for his participation in a conspiracy to fix prices, reduce output, and allocate market shares of
8 color display tubes ("CDTs") in the United States and elsewhere. CDTs are a type of cathode
9 ray tube which is a component product used in the manufacture of non-flat panel computer
10 monitors and other similar products. The Indictment alleges a conspiracy to suppress
11 competition in CDTs from at least as early as January 1997, and continuing until at least as
12 late as March 2006, and charges defendant Yeh with participating in the conspiracy from at
13 least as early as May 1999, and continuing until at least March 2005.

14 After defendant Yeh was indicted in 2010, he remained a fugitive for five years until
15 he came to the United States in 2015 to face the charges. He was arraigned on the Indictment
16 on November 17, 2015. Later that day, he pleaded guilty before this Court to the one count
17 contained in the Indictment under Fed. R. Crim. P. 11(c)(1)(B). Since that time, the defendant
18 has provided valuable cooperation to the Antitrust Division's investigation, including making
19 himself available for an interview. The defendant is obligated to continue to provide such
20 cooperation with the government's investigation pursuant to the cooperation terms of the Plea
21 Agreement. *See* Plea Agreement, Exh. 1, at ¶ 15.

22 **B. Other Legal Proceedings Related to the CRT Conspiracy**

23 Defendant Yeh was one of six individuals, all foreign nationals living abroad, who
24 were indicted in connection with the government's investigation into antitrust violations in the
25 cathode ray tube ("CRT") industry. The six individuals were indicted in four separate
26 indictments returned between 2009 and 2010. *See United States v. Cheng Yuan Lin, a.k.a.*
27 *C.Y. Lin*, Case No. CR 09-0131 (WHA), Dkt. No. 1; *United States v. Wen Jun Cheng, a.k.a.*
28 *Tony Cheng*, Case No. CR 09-0836 (WHA), Dkt. No. 1; *United States v. Chun-Cheng Yeh*,

1 *a.k.a. Alex Yeh*, Case No. CR 10-0231 (WHA), Dkt. No. 1; *United States v. Seung-Kyu Lee*,
2 *a.k.a. Simon Lee, et al.*, Case No. CR 10-0817 (WHA), Dkt. No. 1.

3 In addition, on May 17, 2011, one corporation, Samsung SDI, pleaded guilty to a one-
4 count information charging it with fixing prices, reducing output, and allocating market shares
5 of CDTs in violation of Section 1 of the Sherman Act. It was sentenced to a fine of \$32
6 million and no order of restitution. *See United States v. Samsung SDI Company, Ltd.*, Case
7 No. CR 11-0162 (WHA).

8 The indictments charging the six individuals and information charging Samsung SDI
9 were all related to this Court. After one indicted defendant passed away, the government
10 dismissed the indictment against him, in April 2014. *See United States v. Cheng Yuan Lin*,
11 *a.k.a. C.Y. Lin*, Case No. CR 09-0131 (WHA), Dkt. Nos. 18-19. Besides defendant Yeh, the
12 other remaining indicted individuals are all fugitives at this time.

13 Civil litigation related to the CRT industry began in 2007 shortly after the grand jury
14 investigation went overt, and multiple civil direct and indirect purchaser antitrust class actions
15 are currently pending against CRT manufacturers. Over 40 such class actions were originally
16 filed around the country alleging price fixing of CRT products. These cases were ordered
17 transferred to this district for coordinated pretrial proceedings by order of the United States
18 Judicial Panel on Multidistrict Litigation dated February 15, 2008. These consolidated actions
19 were assigned to Judge Samuel Conti and subsequently transferred to Judge Jon Tigar. *In Re*
20 *Cathode Ray Tube (CRT) Antitrust Litigation*, Case No. 07-5944 (JST), MDL No. 1917.
21 Individual cases by direct and indirect purchasers were also filed. It is the government's
22 understanding that, at this time, the majority of the direct and indirect class action settlements
23 have been negotiated and are pending at various stages of court approval. Class counsel
24 recently approximated that roughly \$100-125 million in settlement has been negotiated on
25 behalf of the direct purchaser class, and roughly \$600 million in settlement has been
26 negotiated on behalf of the indirect purchaser class.

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No. CR 10-00231 (WHA)

III. GUIDELINES CALCULATIONS

The parties and U.S. Probation agree that the appropriate Guidelines sentencing range for imprisonment is 10 to 16 months and the appropriate fine range is \$89,368 to \$446,842.

See PSR at ¶¶ 56 and 63.

The agreed-upon Sentencing Guidelines calculation is as follows:

A.	Base Offense Level [U.S.S.G. §2R1.1(a)]	12
B.	Specific Offense Characteristics [U.S.S.G. §2R1.1(b)]	
i.	Volume of commerce adjustment (greater than \$1M and less than \$10M) [U.S.S.G. §2R1.1(b)(2)]	+2
	<i>Adjusted Offense Level</i>	14
C.	Acceptance of Responsibility [U.S.S.G. §3E1.1]	-2
	TOTAL OFFENSE LEVEL	12
	GUIDELINES RANGE [U.S.S.G. §5, Pt. A]	10-16 months
	FINE RANGE (calculated as one to five percent of the volume of commerce, but not less than \$20,000) [U.S.S.G. §2R1.1(c)(1)]	\$89,368 to \$446,842

IV. MOTION FOR DOWNWARD DEPARTURE

The United States hereby moves, pursuant to U.S.S.G. §5K1.1, for a downward departure from the Guidelines minimum of 10 months to eight (8) months and a reduction in the Guidelines minimum fine from \$89,368 to \$20,000. This recommended reduction is due to the substantial assistance provided by the defendant in the investigation of other individuals who have committed antitrust and related offenses in the CDT industry, particularly by providing evidence against the indicted individuals who remain fugitives at this time. Should those individuals choose to face the charges brought against them in the United States, defendant Yeh is a potential trial witness who could provide valuable testimony. The defendant's assistance to date has been detailed and thorough, and he has been cooperative and forthcoming. In addition, defendant Yeh has willingly come to the United States to face

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1 the charges and accept responsibility, and is the first fugitive in the case to do so. The
2 defendant will continue to provide assistance pursuant to the terms of his Plea Agreement.

3 **V. EIGHT MONTHS IS AN APPROPRIATE SENTENCE**

4 Yeh was an active participant in the CDT conspiracy. He attended 29 cartel meetings
5 with competitors during which agreements were reached to fix prices, reduce output, and
6 allocate market shares of CDT to be sold in the United States. Although not the highest-
7 ranking Chungwa executive involved in the conspiracy, Yeh was a management-level
8 employee who, at times, had the authority to make pricing decisions.

9 For five years after his indictment, Yeh chose to remain a fugitive. Ultimately,
10 however, Yeh came forward to accept responsibility for his actions. He is the first and only
11 individual indicted in the CDT conspiracy to come to the United States to face the charges and
12 admit to his wrongdoing. As a result, the United States recommends starting the sentencing
13 calculation at the low end of the Guidelines. To account for Yeh's cooperation to date and his
14 commitment to future cooperation, the United States recommends a further reduction in his
15 sentence from 10 months to eight months.

16 The factors set forth in 18 U.S.C. § 3553(a) support an eight-month sentence. No
17 further departures or variances are warranted.

18 **A. The Nature and Circumstances of the Offense and History and Yeh's**
19 **Characteristics Support and Eight-Month Sentence**

20 Criminal antitrust violations are serious, white-collar crimes like mail and wire fraud.
21 When Congress increased the maximum prison terms for antitrust violations from three to ten
22 years, it recognized that additional penalties are necessary to deter large-scale cartels, like this
23 one, that affect millions of dollars of commerce. *See* Antitrust Criminal Penalty Enhancement
24 and Reform Act of 2004, Pub. L. 108-237 (2004). Congress intended to send a message to
25 antitrust offenders: "[I]f they are caught they will spend much more time considering the
26 consequences of their actions within the confinement of their prison cells." 150 Cong. Rec.
27 H3657 (daily ed. June 2, 2004) (statement of Rep. Sensenbrenner). As Senator Kohl noted,
28 "criminal antitrust violations, crimes such as price fixing and bid rigging, committed by business

1 executives in a boardroom are serious offenses that steal from American consumers just as surely
2 as does a street criminal with a gun.” 150 Cong. Rec. S3610-02, S3615.

3 In some ways the white-collar price fixer is more blameworthy than the common
4 criminal. White-collar criminals, like Yeh, are often in less desperate circumstances when they
5 commit their crimes than a other types of offenders. When sentencing two price fixers, Judge
6 Bennett of the Northern District of Iowa observed that a “crime of fraud by one who already has
7 more than enough—and who cannot argue that he suffered a deprived or abusive childhood or
8 the compulsion of an expensive addiction—is simply a crime of greed.” *United States v.*
9 *VandeBrake*, 771 F. Supp. 2d 961, 965, 1006 (N.D. Iowa 2011) (internal citations and quotations
10 omitted), *aff’d*, 679 F.3d 1030 (8th Cir. 2012).

11 Yeh was a management-level employee at a major corporation. It is not unusual for
12 someone in his position to have significant education, contribute meaningfully to his community
13 and family, suffer no mental disorders or drug addiction, and have no prior criminal record.
14 These characteristics, however laudable, are shared by most criminal antitrust defendants. They
15 provide no reason to depart downward from the Guidelines sentence because the Guidelines
16 already account for such a typical offender. *See Carter*, 560 F.3d at 1121-22 (9th Cir. 2009)
17 (observing that a defendant’s prior history and circumstances must be so “atypical as to put [the
18 defendant] outside the ‘minerun of roughly similar’ cases considered by the Sentencing
19 Commission in formulating the Guidelines”); *see also* U.S.S.G. §5H1.11 (“Civic, charitable, or
20 public service; employment-related contributions; and similar prior good works are not
21 ordinarily relevant in determining whether a departure is warranted.”).

22 **B. An Eight-Month Sentence Reflects the Seriousness of the Offense, Promotes**
23 **Respect for the Law, and Provides Just Punishment**

24 The CDT conspiracy was significant. Civil class actions have resulted in settlements of
25 approximately \$100-125 million on behalf of the direct purchaser class, and roughly \$600
26 million on behalf of the indirect purchaser class.

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1 Yeh participated in the conspiracy for nearly six years, from May 1999 to March 2005.
 2 He participated in cartel meetings and was involved in the implementation of the agreements
 3 reached at those meetings and the monitoring of those agreements.

4 Although he waited until he was indicted and remained a fugitive for five years, he
 5 ultimately came in and accepted responsibility.

6 These facts weigh in favor of a meaningful term of imprisonment.

7 **C. An Eight-Month Jail Term Is Necessary to Provide Deterrence**

8 For corporate managers like Yeh, prison sentences are a more effective deterrent than
 9 fines. The legislative history of the Sentencing Reform Act notes that for white-collar crimes,
 10 “the heightened deterrent effect of incarceration and the readily perceivable receipt of just
 11 punishment accorded by incarceration were of critical importance.” S. Rep. No. 98-225, at 91-
 12 92 (1983) *as reprinted in* 1984 U.S.C.C.A.N. 3182, 3274-75. As a “very senior corporate
 13 executive” once told a top antitrust enforcer, “as long as you are only talking about money, the
 14 company can at the end of the day take care of me . . . but once you begin talking about taking
 15 away my liberty, there is nothing that the company can do for me.” Donald I. Baker, *The Use of*
 16 *Criminal Law Remedies to Deter and Punish Cartels and Bid Rigging*, 69 Geo. Wash. L. Rev.
 17 693, 705 (2001). Employees have been known to expose themselves and their employers to
 18 enormous risk in the pursuit of profit for the employer. The risk of incarceration will help deter
 19 such behavior.

20 **D. An Eight-Month Sentence Is Consistent with Other International Criminal** 21 **Cartel Sentences**

22 The Antitrust Division has prosecuted numerous foreign national defendants involved
 23 in Sherman Act violations. Most of these foreign national defendants have negotiated
 24 preindictment plea agreements with the Division and voluntarily appeared in the United States
 25 to face the charges brought against them when they could have chosen to remain abroad.

26 The most recent example is the LCD prosecution, which involved conduct that was
 27 similar to that in the CDT industry. Nine foreign individuals pleaded guilty to price fixing in
 28 the LCD industry, and two others were convicted at trial.

1 The nine pleading LCD defendants all pleaded guilty preindictment. Their sentences
 2 ranged from six to 14 months and averaged nine months. The two foreign-national
 3 individuals who were convicted at trial received sentences of 24 and 36 months.

4 Defendant Yeh's eight-month sentence is in line with established precedent.

5 **VI. PROBATION'S FOUR-MONTH RECOMMENDED SENTENCE IS**
 6 **UNREASONABLE**

7 In its final PSR, U.S. Probation recommended a custodial sentence of just four months.
 8 As justification for this variance, the PSR pointed to Yeh's "minimal role" in the conspiracy
 9 and certain elements of his background, including his lack of priors, his voluntary surrender,
 10 and his responsible behavior towards his family. These considerations have already been
 11 factored into the eight-month sentence and do not justify any further reduction in sentence.

12 **A. The Minimal Role Adjustment Does Not Apply**

13 The Guidelines allow for a downward adjustment for defendants who played a minimal
 14 role in the charged crime. U.S.S.G. §3B1.2 ("Mitigating Role"). Although the PSR does not
 15 explicitly include this reduction in its Guidelines calculation, it justifies a variance based on
 16 Yeh's alleged "minimal role." Defendant Yeh was not a "minimal" or "minor" participant in the
 17 offense and should not receive the benefit of this discount.

18 Defendant Yeh was employed by Chunghwa in various CDT sales roles from
 19 approximately July 1992 until March 2005 and became a Director of Sales around March
 20 2002. *See* Indictment, Dkt. No. 1, at ¶ 6. He left his employment at Chunghwa around March
 21 2005. While employed at Chunghwa, defendant Yeh regularly attended cartel meetings with
 22 competitors in the CDT industry, as described in the Plea Agreement and Indictment. *See*
 23 Plea Agreement, Exh. 1, at ¶¶ 2–4; Indictment, Dkt. No. 1, at ¶¶ 4–5. At various times during
 24 the course of these competitor meetings, the individual participants, including defendant Yeh,
 25 had discussions and reached agreements to charge prices of CDTs at certain target levels or
 26 ranges. Indictment, Dkt. No. 1, at ¶ 5. They also had discussions and reached agreements to
 27 reduce production levels of CDTs by shutting down manufacturing lines for certain periods of
 28 time. *Id.* They further discussed and agreed to allocate target market shares of CDTs for the

1 overall market, as well as for particular customers. *Id.* Another of the functions of the
2 competitor meetings was that, in order to implement, monitor, and enforce their agreements,
3 the competitors frequently shared their sales, production, market share, and pricing
4 information. *Id.* Defendant Yeh had an important role in this implementation feature of the
5 competitor meetings and agreements. The government submits that a characterization of his
6 role as minimal or minor would be inaccurate.

7 **B. Yeh's Personal History Does Not Justify a Downward Variance**

8 The PSR recommends a downward variance under 18 U.S.C. §§ 3553(a)(1) and (2)(C)
9 because the defendant voluntarily came to the U.S. from abroad to face the charges when he
10 could have simply remained overseas. *See* PSR at ¶ 73, and Sentencing Recommendation at
11 p. 1. However, the PSF does not acknowledge that Yeh waited until he was indicted and then
12 waited an additional five years as a fugitive. As discussed above, many foreign defendants in
13 the LCD matter pleaded guilty prior to indictment.

14 It is true that defendant Yeh could have chosen to remain overseas and not face the
15 charges. But his decision to accept responsibility and cooperate has been acknowledged and
16 reflected in both the Guidelines calculations and the government's motion for a downward
17 departure.

18 The PSR also points to Yeh's personal history and family responsibilities as grounds
19 for a downward variance. Among white-collar defendants, there is nothing unique about
20 Yeh's personal background that would justify a discount.

21 **C. A Four-Month Sentence Would Create Unwarranted Sentencing Disparities**

22 A four-month sentence in this case would be inconsistent with the sentences of other
23 foreign defendants in cartel cases. It would be significantly lower than the six-month sentence
24 imposed on one of the earliest pleading defendants in the LCD case, who provided timely
25 cooperation pre-indictment, including evidence that helped secure additional convictions and
26 prosecutions in connection with the LCD investigation.

27 In sum, the government believes that the four-month sentence recommended by U.S.
28 Probation in the PSR would result in potentially disparate sentences between defendant Yeh

1 and other defendants found guilty of similar conduct in this District, and that a
2 characterization of defendant Yeh's role in the offense as minimal or minor is not reflected by
3 the facts of this case. The negotiated Plea Agreement between the parties and the jointly
4 agreed-upon eight-month sentence, as well as the government's motion for departure,
5 adequately take into account defendant Yeh's role in the offense as well as his acceptance of
6 responsibility for his conduct and decision to come to the United States to face the charges
7 against him.

8 **VII. CONCLUSION**

9 Eight months is an appropriate and reasonable sentence for defendant Yeh. The facts
10 of the case cannot justify Probation's recommendation for a four-month sentence. As a result,
11 the government respectfully requests that the Court accept the proposed Plea Agreement,
12 including the recommended term of imprisonment of eight (8) months and a fine of \$20,000.

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14 DATED: February 23, 2016

Respectfully submitted,

15 /s/ Lidia Maher

16 Lidia Maher

17 U.S. Department of Justice
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